

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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 ZUBEARU BETTIS, :

 Plaintiff, : ORDER

 -v.- : 21 Civ. 7505 (GWG)

 UNITED STATES OF AMERICA, :

 Defendant. :
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GABRIEL W. GORENSTEIN, UNITED STATES MAGISTRATE JUDGE

On November 15, 2023, the Court ordered a briefing schedule for the Government’s motion to dismiss the amended complaint. See Memorandum Endorsement, dated Nov. 15, 2023 (Docket # 76). The Government timely filed its motion to dismiss on November 20, 2023. See Notice of Motion, dated Nov. 20, 2023 (Docket # 77). Plaintiff, however, did not timely file any response by the opposition deadline, December 20, 2023.

The Court therefore issued an order directing plaintiff to file a response by February 2, 2024. See Order, dated Jan. 12, 2024 (Docket # 83). Plaintiff has now filed a response. See Letter, dated January 24, 2024 (Docket # 84) (“Pl. Letter”).

We begin by noting that we do not know what plaintiff is referring to when he writes that the Court “ignored” his effort to file a complaint as a “federal tort claim.” Pl. Letter at 1. Plaintiff’s amended complaint seeks relief under the Federal Tort Claims Act and was filed on September 12, 2023. See Amended Complaint to FTCA, dated Sept. 3, 2023 (Docket # 68). That is now the operative complaint in this case. See Order, dated Sept. 13, 2023 (Docket # 69).

In his letter, plaintiff states that he was removed from the half-way house to which he was committed on December 19, 2023, the day before his opposition was due, and that he was not permitted to take any papers. In light of this assertion, the Court directs the Government to re-serve the motion papers on plaintiff at his address on the docket sheet. Such service may be made by mail and shall take place by February 7, 2024. Proof of service shall be filed by February 8, 2024.

Plaintiff asks that his opposition not be due until after he is released on May 15, 2024. This is far too lengthy a period to respond to a motion that was filed months ago. Accordingly, plaintiff’s time to file any opposition to the motion to dismiss is extended to March 7, 2024. The Government may file any reply by March 21, 2024.

The Court notes that plaintiff’s letter asserts that he was “intentionally prevented from exhausting administrative remedies by BOP staff” and that he “submitted documents to that effect, which included the Northeast Regional Office manipulating dates to produce a reject

code.” Pl. Letter at 1. The Court assumes that plaintiff is referring to documents attached to his letter dated March 23, 2023, see Letter, dated Mar. 23, 2023 (Docket # 57), which was filed in response to an earlier motion to dismiss. Plaintiff’s opposition papers due March 7, 2024, may incorporate prior filings as long as he is specific as to which prior filings he is referring to.

The Court notes that the statements in the March 23, 2023, filing were made under penalty of perjury as provided in 28 U.S.C. § 1746 and thus may be considered by the Court if they are incorporated. The Court reminds plaintiff that to the extent he wishes to offer any other facts, they also must be in the form of a sworn statement as explained in the “Notice to Pro Se Litigant Who Opposes a Rule 12 Motion Supported by Matters Outside the Pleadings,” which will accompany the re-served copies of the Government’s motion papers.

Plaintiff is further reminded that if he fails to inform the Court of any change of address, his case may be dismissed.

SO ORDERED.

Dated: January 31, 2024
New York, New York



GABRIEL W. CORENSTEIN
United States Magistrate Judge